

MINUTES

INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA

February 21, 2003

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on February 21, 2003 at the Oakland Airport Hilton.

The following members were present in person:

Molly Baier
Peter Bronson
Robert Franklin
Rob Harris
Eric Nyberg
Mark Porter

The following members attended telephonically:

Mike Buckley
Lynn Ernce
Radmila Fulton
Julia Gibbs
Perry Landsberg
Sandra Lavigna
Tom Phinney
Eric Sagerman
Prof. Dan Schechter
Cliff Stevens
Jill Sturtevant

Rob Harris called the meeting to order at approximately 10:00 a.m.

1. Approval of Minutes: January 10, 2003.

The minutes of the January 10, 2003 meeting were approved unanimously.

2. Consideration of New Members.

The Committee discussed the applications of Mark Porter and Colin W. Wied for the open one-year membership slot. The Committee unanimously approved Mark Porter's application, and invited Colin Wied to attend future committee meetings with a view to applying for 2003-04 membership.

3. Programs.

A. Tom Phinney reported on plans for the program on ethics, planned for the Spring Meeting April 4-5, 2003 in Los Angeles. Tom said the panel will consist of Judge Samuel Bufford, UC Davis Law Professor John Ayer, and Adam Lewis of Morrison & Foerster. The program is set for April 4 at 10:30 a.m. Tom said the panel will cover such topics as ethical issues in pre-bankruptcy planning, Rule 11 issues, “noisy withdrawals”, and issues under Sarbanes-Oxley. Written materials are being assembled.

B. Program topics for the State Bar Annual Meeting were also discussed. Rob Harris said it was possible that the Committee could present as many as three programs. The Committee discussed likely target audiences and the possibility of finding out what programs were being planned by other sections. Rob said lists of proposed topics do begin to circulate around this time of the year.

The three topics which generated interest were: A repeat of the “Bankruptcy 101” primer course given at the 2002 State Bar Annual Meeting; the interplay between bankruptcy and family law; and a business-oriented program on the effect of sales.

It was the consensus of the Committee that we should propose to the State Bar the two programs which we are most interested in presenting, plus a third program to be included only if there is room for a third program. Three teams were formed, each to put together a topic and program description for Rob, as follows:

Bankruptcy/family law: Radmila Fulton and Judy Gibbs;

Sales: Perry Landsberg and Mark Porter;

Bankruptcy primer course: Peter Bronson and Geraldine Valdez

Speakers will not be engaged until after we know the parameters and deadlines.

4. Website Report and Constituency Outreach Project.

A. No-Host Dinner for ILC Constituents.

The Committee discussed the request that the Committee hold a no-host dinner on Friday, April 4th from 7:30 to 9:00 p.m., following the reception at the Spring Meeting in Los Angeles. The purpose of this event would be to attract potential new Committee members and to publicize our activities. This would be advertised as part of “e-blasts” that would invite section members to attend our open Committee meeting on the morning of April 4th, the reception, and the post-reception dinner.

It was the consensus of the Committee that the event should only be planned if at least three or four Committee members were willing to participate. Rob, and tentatively Peter Bronson, agreed to take part, and both Sandy Lavigna and Mark Porter said they may be

available. Rob will find out from Jerry Grossman where other committees are setting their no-host dinners, in view of the limited number of suitable restaurants within close proximity to the Park Hyatt Hotel.

B. E-Blast to Constituency List on Ethics Program at Spring Meeting.

Rob will draft, and Tom Phinney will review, an e-blast which will publicize the April 4th ethics program, and will include an invitation to the no-host dinner that evening.

C. Consideration of Response Letter from Constituency Project Coordinator Regarding Constituency List Usage/Bar Membership.

The Committee discussed Suzanne Graeser's February 13, 2003 letter in response to Rob's January 22nd letter. It was decided that Rob will write a letter thanking Ms. Graeser for her comments, and informing her of the federal statute that requires unsolicited e-mails to give the recipient the right to "opt out" of further messages, in order to ensure that there is an "opt out" in each of our e-blasts. Mike Buckley undertook to give Rob a cite to the federal provision.

D. Committee Responses and Concerns for Discussion at Del Mar Retreat.

Rob explained that the forthcoming Executive Committee Retreat March 21-23 in Del Mar would give the Committee an opportunity, through Rob, to raise appropriate issues with the Executive Committee.

E. Volunteers To Prepare Prefatory E-Blast and Coordinate Expansion of Constituency List by Area.

The following members volunteered to obtain local bar membership lists and transmit them to Rob:

Radmila Fulton (San Diego area)

Peter Bronson (Beverly Hills Bar Assn.)

Sandy Lavigna (Los Angeles County Bar Assn.)

Mark Porter (Bar Assn. of San Francisco)

Eric Nyberg (Alameda County and Contra Costa Bar Assns.)

Judy Gibbs (Sacramento area; will also photocopy ABI's California membership list)

Cliff Stevens [Central California (Stockton to Bakersfield)]

Bob Franklin (Santa Rosa)

F. Report on Status of Website, Content.

The Committee discussed the status of its website. While the site is much more current, Mike Buckley explained that the issue is how to make it more useful to insolvency practitioners. He said that he and Geraldine Valdez are preparing to circulate to the Committee an outline proposing revisions and updates. The thrust will be to simplify the structure of the page and amplify dramatically the resources it provides to bankruptcy attorneys. It will feature many more useful links. Mike added that current projects will be accessible from the main page.

Rob Harris said he is still interested in setting up a scrolling box that would list programs around the state, in order to induce cross-selling. He suggested that the members who have volunteered [See Part 4(E) above] to expand the constituency list also obtain the names of the bar association representatives who should be contacted regarding such cross-selling activities.

Rob pointed out, and urged the Committee's review of, Suzanne Graeser's January 16, 2003 memo explaining the electronic communication resources available through the State Bar [pp. 40 *et seq.* of meeting materials].

G. Budget.

Rob explained, and the Committee discussed, the 2002-03 budget for the Committee.

5. Progress Reports on Current Projects.

A. Legislation to Automatically Re-Index California Exemptions.

Rob reported that A.B. 182, regarding indexing of exemptions, had been introduced and was set for hearing on March 4, 2003 between 8:30 a.m. and 12 noon. Opposition from the California Association of Collectors is expected. Rob is working to line up witnesses to testify at the March 4th hearing. Prof. Kenneth Klee is unavailable to attend but will write a statement in support of the bill. With a view to presenting the testimony of one academic person and one well-known practitioner, Rob mentioned Prof. John Ayer of UC Davis School of Law, and Ike Schulman. Rob also will speak with Larry Doyle with regard to other possible practitioner witnesses.

B. Annual Review.

Rob will follow up with regard to the lack of any feedback from the Bar on the materials submitted by Dan Schechter for the Annual Review. Dan thanked Judy Gibbs for providing back issues.

6. New Projects.

A. Badges of Fraud ALP.

Rob will let Dan know the deadline for submission of an ALP. Judy will assist Dan in putting it into the appropriate format. Dan said the ALP should be available for review at the April 4th Committee meeting.

B. CCP § 697.530 – Problem of Perfecting California Lien on Assets of Foreign Corporation.

The Committee continued its discussion of CCP § 697.530, and its apparent emasculation by the 2001 amendment of UCC Article 9. The Committee members will give the matter further thought, and there will be additional discussion. Jill Sturtevant volunteered to contact Harold Lichterman to find out how other states' laws handle the problem. Rob will speak with the UCC Committee chair to ascertain his views.

7. Publications.

A. Article for Business Law News.

Dan will prepare the article (which is to be short and newsworthy), with Jill's assistance. (It was suggested that recent delays in publication of the Business Law News might be a suitable agenda item for the Del Mar retreat.)

B. California Legislative Bulletin.

Rob is coordinating the preparation of a report, with assistance from Geraldine.

8. Legislative Liaisons' Report.

Dan Schechter led a discussion of several pending matters:

A. S.B. 113.

The Committee elected not to become involved with legislation introduced to implement the CLRC's recommendation on stays of mechanic's lien enforcement pending arbitration.

B. A.B. 73.

There was discussion concerning the possibility that A.B. 73, which would prohibit and impose penalties for the use of unsolicited checks and other negotiable instruments, may be subject to federal preemption. In any event, the Committee decided to take no action with regard to this bill.

C. A.B. 88.

The Committee discussed the uncertainties regarding the meaning of this bill, which would make unlawful any consumer sales contract “if a person has not expressly provided, at the time of the purchase, authorization and information sufficient for payment.” Rob will ascertain the status of the bill and the deadline for comments.

D. A.B. 169.

After discussion, the Committee decided not to take any action with regard to this bill, which would amend and add sections to the Financial Code relating to regulation of venture capital companies.

E. In re Burns, 2002 Westlaw 31941450 (9th Cir. B.A.P. Dec. 19, 2002).

The Committee discussed this recent B.A.P. decision, which held that an “ORAP” lien on a judgment debtor’s property extends to such property in the possession of a third party. Peter Bronson will examine existing law, and its origins, in order to define the issues; and there will be further discussion.

9. Next Meeting.

The next meeting will take place April 4, 2003 at the Park Hyatt Hotel in Los Angeles, in conjunction with the Spring Meeting.

10. Meeting adjourned.

The meeting was adjourned at 12:30 p.m.

Peter Bronson
Secretary